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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/549,877 | 12/19/2005 | Miles Stephen Cain | 43191 | 5886 |
| 23342 7590 03/29/2007 KILPATRICK STOCKTON LLP 1001 WEST FOURTH STREET WINSTON-SALEM, NC 27101 | | | EXAMINER CHANG, VICTOR S | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1771 | |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 03/29/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/549,877

Applicant(s)

CAIN ET AL.

Examiner

Victor S. Chang

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 16, 17 and 20-47 is/are pending in the application.
- 4a) Of the above claim(s) 4-13, 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 20-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2/14/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. Applicants' amendments and remarks filed on 2/20/2007 have been entered. New claims 20-47 have been entered. Claims 4-13, 16 and 17 are withdrawn. Claims 14, 15, 18 and 19 are cancelled. It should be noted that since there is no change in claim 11, its identifier "(currently amended)" is incorrect. Further, since claims 11-13 are dependent upon withdrawn claims, their identifier should be corrected as "(withdrawn)" in the next reply.

Election/Restrictions

2. Applicants' election with traverse of claims 1-3 in the reply filed on 2/20/2007 is acknowledged. The traversal is on the ground(s) that the Examiner has applied improper standards for restriction, because Groups I and II are related as product and process, therefore they should be examined together under unity of invention standards. This is not found persuasive, because even if the prior reasoning is overcome, the grounds of rejection set forth below stands to show that Group I lacks novelty, therefore Groups I and II lacks the unity of invention. Applicants' request of rejoinder for withdrawn method claims is acknowledged. Further, Applicants' election of silicone elastomer as the barrier material is acknowledged.

The requirement is still deemed proper.

Claim Rejections - 35 USC § 103

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 and 20-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1 008 310 A1 in view of Furuno et al. [US 6200195 B1].

EP '310 relates to a cloth (fabric) with a sag-preventive member. Fig. 2 shows that the sag-preventive device is formed by laminating layers of cloth layer 2, a flexible hot-melt film layer 11, and an adhesive layer 12 under a heating device, with the cloth and adhesive layers as outer layers [0027 and 0044]. After forming, the film layer is welded on the cloth to provide a flexible adhesive cloth [0013 and 0015]. Examples of clothing are socks, brassieres, under short pants, pantyhose, swimming wear, sport wear, etc.

For claims 1-3, the cloth layer 2, flexible hot-melt film layer 11, and adhesive layer 12 of EP '310 reads on the laminate structure of the fabric layer, barrier layer, and adhesive layer of instant invention. EP '310 lacks teachings of the compositions of the instantly claimed barrier layer and adhesive layer. However, prior art Furuno's invention relates to an adhesive pad for adhering to human skin [col. 1, lines 5-7]. The adhesive pad is formed by 1) initially curing a silicone rubber to a semi-cured stage capable of shape retention; then 2) integrally curing the semi-cured silicone rubber layer and an uncured silicone gel in a heated mold. The cured article comprises a pad body 2 of silicone rubber and a cured silicone gel adhesive 3 [col. 1, lines 64-66 and col. 2, lines 32-48]. It would have been obvious to substitute the bonding film layer 11 and adhesive layer of EP '310 with the semi-cured silicone rubber layer and uncured silicone gel of

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Furuno with a reasonable expectation of success at the time the invention was made, and renders the instant invention obvious, because the selection of a workable melt viscosity of the shape retaining semi-cured silicone is reasonably considered to be an obvious routine optimization to one of ordinary skill in the art of hot melt lamination, motivated by the desire to obtain an integrally laminated adhesive fabric taught by EP '310; further, the selection and substitution of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination. See MPEP § 2144.07.

For claims 20-31, since the combined teachings of prior art render the subject matter of the instant invention obvious, and they are of the same use, workable thicknesses of the barrier layer and adhesive layer are reasonably deemed to be obvious routine optimizations for the same utility.

For claims 32-47, EP '310 relates to a cloth (fabric) with a sag-preventive member, including brassieres, as set forth above.

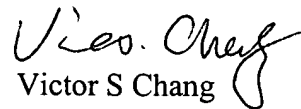
Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor S Chang

Examiner

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3/21/2007